

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 98-204
Broadcast and Cable)	
Equal Employment Opportunity)	
Rules and Policies)	

To: The Commission

**COMMENTS OF THE CURATORS
OF THE UNIVERSITY OF MISSOURI**

The Curators of the University of Missouri (the "Curators"), the licensee of commercial television station KOMU-TV, Columbia, Missouri, and noncommercial educational FM broadcast stations KBIA(FM), Columbia, Missouri, KCOU(FM), Columbia, Missouri, KUMR(FM), Rolla, Missouri, KMNR(FM), Rolla, Missouri, KWMU(FM), St. Louis, Missouri and KCUR-FM, Kansas City, Missouri, by its attorneys, hereby submit comments in response to the Commission's Third Notice of Proposed Rule Making, FCC 02-303, released November 20, 2002 ("Third NPRM"), in the above-referenced proceeding.

I. Introduction

The University of Missouri is the state university of Missouri, established by Article IX, Section 9 of the Missouri Constitution, and governed by a Board of Curators whose members are appointed by the Governor and confirmed by the State. The University of Missouri is the oldest land grant institution west of the Mississippi River and was established by the State of Missouri to fulfill a mission of teaching, research and service for the citizens of the State and for the nation. As demonstrated herein, a state university, whose mission includes the training of students, has very different needs and obligations than a traditional broadcaster. Furthermore, a

state university must operate under financial constraints, particularly in these difficult economic times, that are very different than those of commercial broadcasters. For the reasons set forth herein, part-time employees of broadcast stations licensed to educational institutions such as The University of Missouri should be exempt from the recruitment and recordkeeping/reporting requirements of the EEO Rule adopted by the Commission in November 2002. *Second Report and Order and Third Notice of Proposed Rule Making*, FCC 02-303, released November 20, 2002 (the “2002 EEO Rule”).

The 2002 EEO Rule applies to all full-time employees, i.e., those whose regular work schedule is 30 hours or more per week. According to the Third NPRM, which was included in the *Second Report and Order*, the Commission did not have sufficient record evidence to make an informed decision about whether and how to apply the 2002 EEO rules and policies to part-time positions, defined as less than 30 hours per week. Thus, the Commission seeks comments on how many and what types of positions in the broadcast industry fall into this category, the significance of those positions in terms of entry into broadcasting, how burdensome compliance with the recruitment, recordkeeping and reporting requirements for part-time positions would be for broadcasters, and whether the requirements for part-time positions should be the same as or different from those applicable to full-time positions.

II. The Commission Has Previously Exempted Part-time Employees From Many of The EEO Requirements

It is clear that the nondiscrimination component of the EEO Rule applies to part-time employees as well as full-time employees. However, in other respects, the FCC has previously exempted or partially exempted part-time employees from the requirements of its EEO rules. The 2000 EEO Rule required stations to “substantially comply” with the recruitment provisions of the EEO Rule when hiring part-time employees. However, the 2000 Rule did not impose

recordkeeping and reporting requirements for part-time employees. In adopting the 2000 Rule, the Commission stated: “[w]e see no reason to depart from this policy [of exempting part-time hires], which serves to minimize burdens on broadcasters, especially smaller broadcasters.” 15 FCC Rcd 2329 at para. 110 (2000). This conclusion with respect to the treatment of part-time broadcasters is consistent with numerous Commission decisions. *See, e.g., Enterprise Media of Toledo, L.P.*, 12 FCC Rcd 3920 at para. 10 (1997) (finding it “inconsequential” that none of a station’s eleven part-time employees was a minority); *KNOE, Inc.*, 11 FCC Rcd 19655 at para. 17 (1996) (rejecting the assertion that the Commission should consider the licensees’ part-time employment record); *WFSQ(FM)*, 7 FCC Rcd 6045 at para. 8 (1992) (disregarding arguments concerning part-time hires, stating that the Commission’s EEO analysis “is directed at efforts made for full-time hires”).

The Commission should exempt part-time employees from the recruitment requirements of the 2002 EEO Rule as well as from the recordkeeping/reporting requirements. The former EEO rule’s requirement that employers substantially comply with the recruitment requirements with respect to part-time employees is simply unworkable. No one knows what “substantial compliance” means, and use of this phrase opens licensees up to unnecessary attacks by those who file petitions to deny. Since the Commission has repeatedly said that its EEO efforts are directed at full-time hires, its rules should follow that philosophy.

III. If the Commission Extends Its 2002 EEO Rules to Include Part-time Employees, Educational Institutions Should be Exempted

As set forth above under Section II, the Commission should exempt part-time employees from both the recruitment and the recordkeeping/reporting requirements of the 2002 EEO Rule. At a minimum, the Commission should certainly exempt broadcast stations licensed to educational institutions from these requirements. Unlike traditional broadcast stations, those

licensed to educational institutions focus on teaching and learning as well as station operations. Stations licensed to educational institutions employ student interns, have students engaged in federally funded work-study programs working at their stations, and employ students as part-time employees.

For instance, as a teaching facility, KOMU-TV's program includes between 40 and 60 student interns each semester. These interns are not selected from the population at large, but instead are University of Missouri students who have enrolled at the University's renowned Journalism school in particular courses related to television. For insurance purposes, the students are hired as part-time employees. They comprise a substantial portion of the station's production staff and also appear as on-air personnel. The training that they receive at the station is part of their journalism courses and helps to prepare them for careers in broadcasting upon graduation. Although the University's students come from all ethnic and racial groups and are both minority and female, KOMU-TV has no control over which students are enrolled in the Journalism School or in specific courses related to television. The Commission recognized this situation in its *Report and Order* in the 2000 EEO rulemaking when it stated in response to the University's Comments: "[f]or purposes of our EEO Rule, persons who function as student interns may be treated as such, irrespective of how they are treated for insurance purposes." *See Report and Order*, 15 FCC Rcd 2329 (2000), *recon. denied*, 15 FCC Rcd 22548 at fn.183 (2000). That recognition should be ratified in connection with the New EEO Rule.

Students also work at the University's radio stations under federally funded work-study programs. In these cases, the Federal Government pays the student and Financial Aid refers them to the stations. The only requirement is that they must be U.S. citizens. The University system, and not the stations themselves, dictate how many hours they may work, and they must

adhere to certain standards. Generally, students that participate in the work-study programs work less than 16 hours per week. Since they are not paid by the station, students in this category should also be treated as interns and not counted as part-time employees.

In addition to student interns and students working under work-study programs, the stations in the University system also have part-time employees, many of whom are students. KUMR(FM), the University's noncommercial educational FM station in Rolla, Missouri, has a number of students working under work-study programs. In addition, KUMR hires students to work part-time as board operators. The work at KUMR ties into the students' academic activities, particularly in the areas of electrical engineering and computer science. Station KCUR(FM), the University's noncommercial educational FM station in Kansas City, has part-time employees as well as student interns. Noncommercial educational FM Station KWMU, St. Louis, currently has part-time employees and has interns from local high schools as well as from the University's St. Louis campus. KBIA(FM), the University's noncommercial educational station in Columbia, Missouri, has a number of students participating in its work-study programs and two part-time students who work on publicity and production related to the University's Concert Series.

The University's stations try to recruit for part-time jobs from the student body on their campuses since students often need part-time jobs to help assist them in meeting the expenses of obtaining a University education. In this connection, because the University is committed to obtaining a diverse student body, the pool from which the stations attempt to select part-time employees is diverse at the outset. The part-time employees who work at these stations generally work on weekends and take the place of a full-time employee who would otherwise have to be paid on an overtime basis. When the part-time employees leave, which is often on a

spur of the moment basis, these stations have found that they need to be replaced immediately because there is no one else to work the weekend jobs. If the 2002 EEO Rule were applied to these part-time positions, the stations would have to spend more time seeking applicants and maintaining records. Recordkeeping with respect to part-time employees is particularly time-consuming because there is considerable turnover. Moreover, application of the FCC's 2002 EEO Rule to part-time employees is likely to result in the elimination of jobs that students might otherwise take.

There are strong reasons why educational institutions should be exempt from any application of the 2002 EEO Rule to part-time employees. As noted above, educational institutions use their radio and television facilities as part of the teaching process and therefore, most of their "employees" are students or are affiliated with the institution. Student stations are most often located either on or closely adjacent to the educational institution with which they are associated. Students at educational institutions are always looking for sources of employment to help defray the costs of their education and broadcast stations provide one such source.

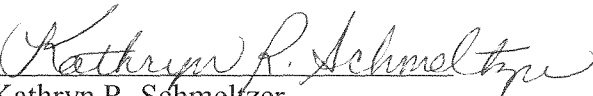
As show above, extending the 2002 EEO Rule to part-time employees would cause serious problems for the University stations. In a time of shrinking budgets for state institutions, the University stations simply do not have the budgets to perform all of the additional recruitment and tracking efforts that would be entailed if the 2002 EEO Rule were applied to part-timers. In short, educational institutions like the University of Missouri offer unique part-time employment opportunities for students that should be exempt from any expansion of the 2002 EEO Rule.

III. Conclusion

For the reasons set forth above, the Commission should refrain from extending its 2002 EEO Rule to part-time employees or, at a minimum, should exempt part-time employees at stations licensed to educational institutions.

Respectfully submitted,

***THE CURATORS OF THE
UNIVERSITY OF MISSOURI***

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